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VIA ECF

Honorable Paul G. Gardephe
United States District Judge
United States District Court
Southern District of New York
500 Pearl Street
New York, New York 10007

MEMO ENDORSED December 16, 2019

The Application is granted.

SO ORDERED:

Paul G. Gardephe
Paul G. Gardephe, U.S.D.J.

Dated: Dec. 17, 2019

*The conference is
adjourned to Jan. 16,
2020 at
10:00 A.M.*

Re: *Darrel Leckie v. City of New York, et al.* 19-cv-06719 (PGG)
Request Amend Complaint and Adjourn Conference

Your Honor:

I, along with the Anna Berezovski, Esq., represent the plaintiff in the above-referenced civil rights matter. We write to respectfully request leave to 1) amend the complaint pursuant to Fed. R. Civ. P. 15 to substitute the John/Jane Doe DOCCS Medical Providers with their true names; (2) serve these individuals at upstate correctional facilities; (3) adjourn the initial conference scheduled for December 19, 2019 at 11:00 a.m. until a time after issue has been joined. Counsel for the City and HHC Defendants consent to these requests.

As the Court may recall, the Court So-Ordered two subpoenas to compel the identities and service addresses of DOCCS medical providers #280 (Napoli, R.N.), #104 and #703. After serving the most recent subpoena upon DOCCS on about November 22, 2019, counsel for plaintiff was contacted by Marat Shkolnik, Assistant Counsel, Department of Corrections and Community Supervision. (See, Ex. 1, Affidavit of Service.) After providing additional requested information and documents to Marat Shkolnik, on December 10, 2019, the identities and services addresses of medical providers #280, #104 and #703 were provided to counsel.

Accordingly, plaintiff seeks to amend the complaint *solely* to substitute the following parties with their true names:

- Medical providers #703 - Khondkar Rakib, D.D.S - to be served at Sing Sing Correctional Facility, 354 Hunter St., Ossining, New York 10562
- Medical providers #1-4 - Jordan Laguio, M.D - to be served at Ulster Correctional Facility, 750 Berme Rd., Napanoch, New York 12458
- Medical providers #280 - Debbie Napoli, R.N - to be served at Ulster Correctional Facility, 750 Berme Rd., Napanoch, New York 12458



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Plaintiff has annexed, for the Court's convenience, a copy of the proposed amended complaint and summonses. (See Exs. 2-5).

Fed. R. Civ. P. 15 provides that a party "may amend its pleading only with the opposing party's written consent or the court's leave." Fed. R. Civ. P. 15(a)(2). Rule 15 expresses a strong presumption in favor of allowing amendment, providing that "[t]he court should freely give leave when justice so requires." *Id.* The letter and spirit of Rule 15(a)(2) guide the courts in the exercise of their broad discretion in deciding a motion to amend, and thus 'motions to amend should generally be denied in instances of futility, undue delay, bad faith or dilatory motive, or undue prejudice to the non-moving party.' Burch v. Pioneer Credit Recovery, Inc., 551 F.3d 122, 126 (2d Cir. 2008) (citing Foman v. Davis, 371 U.S. 178, 182, 83 S. Ct. 227, 9 L. Ed. 2d 222 (1962)); accord McCarthy v. Dun & Bradstreet Corp., 482 F.3d 184, 200-01 (2d Cir. 2007). Here, plaintiff diligently sought the timely disclosure and amendment of the pleadings, identified the parties by the medical identification numbers in their initial pleadings, and have viable, cognizable claims against the medical provider definitions, amendment should be permitted here.

Accordingly, plaintiff respectfully requests, on consent, thirty (30) days in which to 1) amend the complaint pursuant to Fed. R. Civ. P. 15 to substitute the John/Jane Doe DOCCS Medical Providers with their true names; (2) serve these individuals at upstate correctional facilities. Plaintiff also respectfully requests that, should the Court grant plaintiff's request, that the Court (3) adjourn the initial conference scheduled for Thursday, December 19, 2019 at 11:00 a.m. until a time after issue has been joined.

I thank the Court for its consideration herein.

Respectfully submitted,

/s/

Katherine E. Smith

To: Counsel of Record for Defendants City and HHC (Via ECF)